



November 9, 2015

## The Pension Story So Far

In the wake of OSFI's "no" to the joint approach by NAV Canada and its unions, let's pause for a moment and review some history of how we got to this point.

### ***Very early days***

Almost 30 years ago, legislators turned their attention to how to better protect members of a defined benefit pension plan (such as the NCPP – NAV Canada Pension Plan) when a company goes bankrupt, or the pension plan is simply "terminated".

The answer they came up with seemed straightforward enough: Make sure there's enough money in the plan at the time of termination to pay out all pensions of those already retired, as well as the full benefits accrued by active employees.

How to do that? Require all plans to conduct an "actuarial valuation" at least every three years. The actuaries pretend that the plan is being terminated and they calculate its assets and liabilities. If there's not enough money to cover all its obligations, then the employer is required to contribute extra cash and pay off the entire "solvency deficit" over a five-year period.

### ***Trouble on the horizon***

In the early 2000s, interest rates began to decline. That caused "solvency deficits" to start climbing – because when the long-term rate of return is low, more money has to be invested today to guarantee the same future returns. NAV Canada and other employers suddenly found themselves spending more, not only on actual pensions to retirees, but for the purely hypothetical scenario of bankruptcy or plan termination.

NAV Canada, being a legislated monopoly and a necessary pillar of the civil aviation system, [began to plead its case](#) to the government (along with other employers). It said a "one-size-fits-all" approach to all companies, weak or strong, and all pension plans, made no sense. It made numerous recommendations for change in the case of the highest-rated companies – such as increasing the solvency paydown period to 15 years, excluding automatic indexation from the post-bankruptcy calculations (thus reducing the required contributions), allowing the use of "letters of credit" in place of cash, etc.



CATCA and the national CAW supported NAV's efforts to alleviate the solvency funding rules, some of which came to pass (like letters of credit and some temporary measures). We were prepared to back reasonable changes rather than be under constant pressure to dilute our pension plan or give other monetary concessions.

### ***Still looking for joint solutions***

During this whole period, CATCA was concerned that NAV Canada might look to unilateral action to resolve its increasing concern about solvency payments. We were painfully aware, too, that the Company could change the pension plan on its own, without union consent, so long as it didn't reduce benefits already earned.

In 2008, CATCA allowed NAV Canada to offer current and future employees a one-time choice between the "legacy" plan (Part A) and Part B. In exchange, a historic achievement: The key elements of the pension plan (specifically those sections outlining benefits, contributions, eligibility, etc.) were, for the first time, enshrined within the collective agreement, meaning no more changes without union agreement – and a specific article stating that NAV cannot terminate the pension plan without CATCA's consent. Finally, key changes to our pension plan required our approval.

### ***Fast forward to 2013***

The last round of bargaining began with NAV Canada facing a solvency deficit of \$509 million, payable over five years. This time NAV tabled aggressive demands for pension changes – the key ones being:

1. Part B for all new hires (not voluntary any more); and
2. No more automatic indexation in the event of bankruptcy or plan termination.

When no agreement was possible, these and other issues were submitted to Arbitrator Michel Picher for determination.

The Arbitrator's [April 8, 2013 award](#), while softening the blow somewhat, basically gave the Company what it wanted:

1. Effective January 1, 2014, all new hires to be enrolled in Part B. Each such employee to receive \$2,000 on qualification, which may be placed directly into an RRSP. CATCA and NAV Canada were directed to develop a group RRSP for the new hires, something which has now been completed.

2. An end to guaranteed indexation for future Part A retirees in the event of company bankruptcy or plan termination. Recognizing that such a change would require OSFI approval, the award “direct[s] the Union’s President to attend with management representatives at any future meeting with OSFI or subsequent related processes, and to lend the Union’s approval and support for the changes proposed in a reasonable effort to secure any necessary OSFI approvals.”
3. OSFI’s approval would trigger a “wage reopener” to allow union members to share in the significant savings to be realized by the Company. If they can’t agree on the amount, the arbitrator will decide.
4. Immediate conversion of the 2005 1% non-pensionable raise to pensionable status.

### ***Aftermath of the arbitration award***

CATCA began to work with NAV Canada on proposed language to present to OSFI. Meanwhile, the other seven NAV Canada unions either negotiated similar provisions or had them imposed by arbitration. As the process unfolded, the NAV Canada Bargaining Agents Association (NCBAA), which is a coalition of NAV Canada’s eight union groups, appointed CATCA President Peter Duffey to act as spokesperson for the group in moving forward with NAV Canada on the pension plan changes.

A union pension committee was formed, consisting of Peter Duffey; IBEW Business Manager, Dan Boulet; and PIPSC President, Mike Simard to continue working on language with NAV Canada. Very early in the process the NCBAA decided to contribute to a fund to hire a top-notch pension expert. After making inquiries, we were directed to Michael Mazzuca, a pension lawyer with Koskie Minsky in Toronto, one of the most noted union-side labour law firms in Canada.

Over the course of many months, painstaking work was undertaken with the best resource people available to fine-tune a proposal for OSFI, and just as importantly, to secure increased protection for our members’ interests. For example, in the course of negotiating the shape of the proposed amendments, we were able to get NAV Canada’s agreement to include (within the pension plan text) CATCA’s right to veto any plan termination affecting CATCA members.

Such an amendment would be filed with OSFI and would significantly strengthen the similar existing provision within the collective agreement.

Another key point of negotiation was a window of at least 60 days, following OSFI approval, for communication with union membership and time for members to reflect on the implications.



NAV Canada agreed that any member who chose to leave before the 60-day period had expired would not be affected by the proposed amendments. This would fulfill a commitment CATCA has made to its members throughout the process.

Finally, on November 28, 2014, representatives of NAV Canada and all eight bargaining agents attended a meeting at the OSFI offices in Ottawa. The purpose was to present the concept to OSFI and get an opinion as to whether they might approve a formal submission at a later date. After hearing the presentation and posing some questions, the OSFI representatives adjourned to consider the proposed concept. They gave no indication at the time – whether positive or negative.

As has already been reported, the proposal, based on the Arbitrator's order, would have the following effect:

- If and when the NAV Canada pension plan were to be terminated – which could only happen with union permission – the following would apply to Part A members:
  - Employees who have retired *before* the effective date (that is, the date OSFI's approval takes effect) will have guaranteed CPI indexation of pension benefits during retirement if the plan were to be terminated.
  - Employees who retire *after* the effective date will have fixed rate indexation adjustments of pension benefit entitlements during retirement to the extent that any plan surplus assets would allow if the plan were to be terminated.

For emphasis: as long as the pension plan continues in operation, there would *no effect whatsoever* on Part A members, whether active or retired (except, of course, the benefit of the wage reopener).

It should be noted that no formal proposal was ever submitted to OSFI. Both NAV Canada and the NCBA wanted OSFI's feedback about the general concept first, in order to ensure that any wording finally submitted would have the best chance of success.

Over the following months, there was very limited contact with OSFI as they considered the concept. Both NAV Canada and the unions were of the opinion that the amendments being sought could be approved. But as we now know, it was not to be. In our October 2015 meeting, OSFI representatives conveyed their clear opinion that they saw this concept as a "workaround" which was contrary to the intent of the legislation, and not one which they could approve.

Discussions continue, and next steps are still to be decided. We will continue to update the membership on all developments. Transparency on this issue is of the utmost importance.